

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

DANA JENNINGS and JOSEPH A.  
FURLONG, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiffs,

v.

CARVANA, LLC,

Defendant.

Case No. 5:21-cv-05400

Hon. Edward G. Smith

**BRIEF IN SUPPORT OF DEFENDANT CARVANA, LLC's  
MOTION TO EXTEND TIME TO FILE ANSWER**

Defendant Carvana, LLC (“Carvana”), by and through its undersigned counsel, files this Brief in Support of its Motion to Extend Time to File Answer, and in support thereof, states as follows:

1. On January 28, 2022, Carvana filed a motion to compel arbitration and to dismiss or stay all of Plaintiffs’ claims. *See* Dkt. 18.

2. On September 30, 2022, the Court entered an opinion and order denying Carvana’s motion to compel arbitration and to dismiss or stay. *See* Dkts. 36, 37.

3. On October 17, 2022, Carvana filed a timely notice of appeal from the Court’s order and opinion. *See* Dkt. 39.

4. Also on October 17, 2022, Carvana filed a motion to stay proceedings pending resolution of the appeal. *See* Dkt. 40. Carvana explained that a formal stay is unnecessary because the filing of a notice of appeal divests the district court of jurisdiction and “automatically stays proceedings in the district court.” *Tae In Kim v. Dongbu Tour & Travel, Inc.*, 529 F. App’x 229, 233 (3d Cir. 2013). Carvana also explained that the stay remains in effect “until such time as the

appeal is fully litigated or determined to be frivolous or forfeited.” *Ehleiter v. Grapetree Shores, Inc.*, 482 F.3d 207, 215 n.6 (3d Cir. 2007). Solely for purposes of clarification, however, Carvana requested that the district court enter an order staying the proceedings. Plaintiffs represented that they would oppose a stay, but have not yet responded to Carvana’s motion. The Court has not yet ruled on the motion for stay. The district court docket indicates that Carvana’s deadline to file an answer is October 21, 2022, and the parties’ deadline to file a joint Rule 26(f) report is November 24, 2022. *See* Dkts. 37, 38.

5. For purpose of clarifying the docketed deadlines, Carvana respectfully requests that the Court enter an order extending the deadline for Carvana to respond to the complaint until after the Court has resolved Carvana’s motion for stay and, if necessary, upon the Court’s resolution of the stay motion, enter an appropriate order concerning the upcoming deadlines.

6. Carvana believes that a formal extension, like a formal stay of proceedings, is unnecessary given Third Circuit precedent holding that the notice of appeal automatically stays the proceedings. That stay (which extends to all deadlines, including the answer) is “*automatic*” and remains in effect “*until* such time as the appeal is fully litigated or determined to be frivolous or forfeited.” *Ehleiter*, 482 F.3d at 1043 n.6 (emphasis added). Because the appeal has not been fully litigated or determined to be frivolous or forfeited, the case is stayed in this Court. Consistent with that rule, Carvana understands that it is not required to file an answer to the complaint on October 21, 2022.

7. Carvana nevertheless requests an extension for the purpose of clarification. An extension of the existing deadlines would facilitate efficient resolution of the Parties’ dispute, clarify existing deadlines, and conserve judicial resources. Plaintiffs will not be prejudiced from

a short extension, including because the case is already stayed in light of the absence of jurisdiction.

8. Carvana has conferred with counsel for Plaintiffs, who stated that they intend to oppose this motion, notwithstanding controlling Third Circuit precedent.

9. For these reasons, Carvana respectfully requests that this Court enter an Order extending the deadline for Carvana to file an answer until the Court has ruled on the motion for stay.

Dated: October 20, 2022

Respectfully submitted,

/s/ Eric Leon

---

Eric Leon (New York Bar No. 2626562)  
(Admitted *Pro Hac Vice*)  
eric.leon@lw.com  
Marc S. Werner (New York Bar No. 5301221)  
(Admitted *Pro Hac Vice*)  
marc.werner@lw.com  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864

Robert C. Collins III (Illinois Bar No. 6304674)  
(Admitted *Pro Hac Vice*)  
robert.collins@lw.com  
LATHAM & WATKINS LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Telephone: (312) 876-7700  
Facsimile: (312) 993-9767

Paul G. Gagne (Pennsylvania ID No. 42009)  
pgagne@kleinbard.com  
KLEINBARD LLC  
Three Logan Square

Philadelphia, PA 19103  
Telephone: (215) 523-5302

*Counsel for Defendant Carvana, LLC*

**CERTIFICATE OF SERVICE**

I, Eric Leon, hereby certify that I caused a copy of the foregoing to be served on the parties listed below, via the Court's ECF system, on October 20, 2022.

Robert P. Cocco  
ROBERT P. COCCO, P.C.  
Pa. Id. No. 61907  
1500 Walnut Street, Suite 900  
Philadelphia, PA 19102  
Telephone: (215) 351-0200  
Email: bob.cocco@phillyconsumerlaw.com

Phillip Robinson  
CONSUMER LAW CENTER LLC  
8737 Colesville Road, Suite 308  
Silver Spring, MD 20910  
Telephone: (301) 448-1304  
Email: phillip@marylandconsumer.com

*Counsel for Plaintiffs*

Dated: October 20, 2022

/s/ Eric Leon

Eric Leon

eric.leon@lw.com  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020

*Counsel for Defendant Carvana, LLC*